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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/790,152	03/01/2004	Joseph N. Casey	SP-1311	9984

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EXAMINER	
PRATT, HELEN F	
ART UNIT	**PAPER NUMBER**
1761	

DATE MAILED: 01/17/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/790,152	CASEY ET AL.	
	Examiner	Art Unit	
	Helen F. Pratt	1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on _____.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) 1-34 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) 1-34 is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on _____ is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dutilh (4,608,267).

Dutilh discloses a process of making a choline-fortified cereal by combining wheat bran and honey and extruding at 150 C (col. 6, lines 47-55). Also candy bars are made with oat flakes, sugar, coconut nuts and the lecithin bits (col. 6, lines 55-70). Claims 1 and 2, 3, 4 10 differ from the reference in whether the cereal ingredients are cooked and in blending the choline (lecithin) in the mixing zone of the extruder. However, the cooking of cereal in a cook zone in an extruder is well known and nothing new is seen in this as is conditioning as in claim 4. Dutilh discloses extruding the wheat bran and lecithin and adding to a mixture of ingredients as in col. 6, lines 55-65. Even though the mixing zone of the extruder is not disclosed, it would have been within the skill of the ordinary worker to mix where it was convenient. Also, Ex. 4 of Dutilh discloses a mixture of various candy ingredients, and it also discloses the use of oat flakes, sugar, and coconut which are also ready to eat cereal ingredients and claim 1 does not specifically require any particular cereal ingredients. Also, the reference discloses that extruded product can be added to breakfast cereal (col. 5, lines 1-2).

Therefore, it would have been obvious to add lecithin to another mixture as shown by Dutilh.

Dutilh discloses cutting the extruded mixture as in claim 5 and nothing new is seen in drying the cereal pellets as in claim 6, which is routine or flaking a cereal piece, as cereals are often found in flaked pieces as is toasting as in claim 8 and puffing as in claim 9. Therefore, it would have been obvious to use known method of treating cereals.

Claim 11 further requires a particular amount of choline (lecithin). Dutilh discloses that from 10-50 grams can be used as a daily dosage (col. 2, lines 18-20). The reference discloses adding from 6-315 in its examples. Therefore, it would have been obvious to add the claimed amounts to a cereal as disclosed by Dutilh.

Claim 12 further requires that the choline is a choline salt and claim 13 requires blending a choline salt into the cereal mass in particular amounts. However, no patentable distinction is seen in the use of choline or the salt form of choline as the specification states that both kinds can be used. Therefore, it would have been obvious to use a salt of choline and to treat as described above for claim 13.

The claimed product has been shown above and is obvious for those reasons. Claim 14 is also a product by process claim. The fact that the procedures of the reference are different than that of applicant is not a sufficient reason for allowing the product-by-process claims since the patentability of such claims is based upon the product formed and not the method by which it was produced. See In re Thorpe 227 USPQ 964. The burden is upon applicant to submit objective evidence to support their position as to the product-by-process claims. See Ex parte Jungfer 18 USPQ 2D 1796.

The limitations of claim 15-23 have been disclosed above and are obvious for those reasons.

Claim 24 further requires that a blend of cereal ingredients is cooked and choline is blended into the cooked cereal mass. Dutilh discloses adding a source of choline into cereal ingredients as disclosed above. The further limitations of claims 26-34 have been disclosed above and are obvious for those reasons.

Claims 14, 15, 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over CN 1271539A.

Lu et al. disclose an instant barley gruel containing lecithin in amounts of 1-5% and barley in which it is extruded and puffed (abstract). The claims differ from the reference in that the process is different. See in re Thorpe above, which states in part that only the limitations of the composition need to be shown in a composition claim absent a showing that the process makes for an unobvious product. Therefore, it would have been obvious to make a cereal product containing the claimed ingredients.

Claims 14, 15, 17, 20, 21, 23 and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wullschleger (5227248).

Wullschleger discloses a ready to eat cereal product as in claims 14, 15, 17, 20, 21, 23 and 34 containing 0.5 % choline chloride, which is seen to have been 5% of the adequate intake (col. 11, lines 25-70, col. 12, lines 1-25). The limitations of the process do not need to be shown in a composition claim. See in re Thorpe above. Therefore, it would have been obvious to use known amounts of choline and to use it in a salt form.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Helen F. Pratt whose telephone number is 571-272-1404. The examiner can normally be reached on Monday to Friday from 9:30 to 6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Milton Cano, can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Hp 1-10-06

H. Pratt

HELEN PRATT
PRIMARY EXAMINER